

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

Entity =
State =
Municipalities =
Supervisors =

Dear :

This letter responds to a letter from your authorized representative dated November 28, 2011, as well as subsequent correspondence, submitted on behalf of the Entity, requesting a ruling that the Entity's income from its activities is excludable from gross income under Internal Revenue Code (IRC) § 115(1).

FACTS

The Entity is an unincorporated association in State. It was created to serve its member Municipalities. Regular membership in the Entity is limited to duly elected or appointed Supervisors in State who are in good standing with the Entity. Upon recommendation of the Entity's board of directors, individuals who have contributed to the interest of municipal government in State may become honorary members. Regular members are entitled to vote on any matter properly coming before them; honorary members have no voting rights. Membership dues constitute the Entity's primary source of revenue.

A board of directors oversees the Entity's operations. The board consists of a mix of the Entity's current and past officers, and other, nonemployee directors. The Entity's officers and directors are elected by the regular membership. Officers serve two-year terms without compensation. Directors serve for either one or two years without compensation.

According to its bylaws, the Entity's purpose is to provide a medium through which members may (1) promote educational opportunities for Supervisors by conducting educational conferences; (2) promote and protect the interests of Supervisors in State; (3) disseminate information of interest and concern to all member Supervisors and officials; (4) increase cooperation among member Supervisors; (5) promote legislation beneficial to the operation of Supervisors; (6) inform the public, the State legislature, and other governmental bodies of the advantages and benefits which are derived from municipal government; and (7) coordinate and cooperate with organizations located in State for the purpose of strengthening Municipal government in State.

To this end, and among other things, the Entity, sometimes in conjunction with another organization that promotes municipal government in State, sponsors and conducts education seminars and conferences on topics of relevance to Supervisors. These conferences generally offer sessions not only of general interest to Supervisors, but also those more directed to their specific duties. The Entity provides Supervisors with its operations manual, describing the laws and duties applicable to Supervisors. The Entity also distributes pamphlets and maintains a website with information of interest and benefit to Supervisors, including educational opportunities available from and through the Entity.

The Entity's bylaws prohibit private inurement of any of the Entity's assets. They further provide that the Entity's assets are dedicated for the purposes of the Entity and for the benefit of its members. Upon dissolution of the Entity, any remaining assets will be distributed equally to the Municipalities, the Supervisors of which are regular members in the year of dissolution.

LAW AND ANALYSIS

IRC § 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC §115(1), because the organization is performing an essential governmental function. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

The Entity engages in a variety of activities designed to assist the Supervisors of its member Municipalities to better perform their governmental duties. Such activities include sponsoring educational conferences, providing technical assistance and advice to Supervisors, promoting cooperation and information exchange among the Supervisors, and acting as a legislative advocate for the Municipalities. Engaging in these kinds of activities constitutes the performance of an essential governmental function within the meaning of IRC § 115(1). See Rev. Rul. 77-261 and Rev. Rul. 90-74.

The income of the Entity accrues to the Municipalities, which are political subdivisions of the State. No private interests participate in, or benefit from, the operation of the Entity, other than as providers of goods or services. The dedication of the income and assets of the Entity for the exclusive benefit of its member Municipalities satisfies an obligation the Entity has assumed or been assigned with respect to promoting good government among its members. Any and all Entity assets remaining upon dissolution of the Entity will be distributed equally to its member Municipalities whose Supervisors are regular members in the year of dissolution. See Rev. Rul. 90-74.

Based solely on the facts and representations submitted on behalf of the Entity, we conclude that:

Because the income of the Entity is derived from the exercise of an essential governmental function and will accrue to a state, a political subdivision of a state, or an organization the income of which is excludable under IRC § 115(1), the Entity's income is excludable from gross income under IRC § 115(1).

No opinion is expressed concerning the federal tax consequences under any IRC provision other than the one specifically cited above.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. IRC § 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, your authorized representative will receive a copy of this letter.

Sincerely,

Kenneth M. Griffin
Chief, Exempt Organizations Branch
(Tax Exempt & Government Entities)

Enclosure (1)

cc: